

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIO CHAVEZ-LUCATERO,

Defendant.

Case No. 1:20-CR-062 NONE SKO

**ORDER IMPOSING MONETARY
SANCTIONS ON ATTORNEY LOETHEN**

JANUARY 20, 2021 DAY DEADLINE

This matter came on for hearing on December 28, 2020 on an Order to Show Cause why sanctions should not be imposed on attorney Christopher Loethen for failing to appear at the December 18, 2020 hearing. Attorney Loethen was ordered to appear at the December 28, 2020 hearing. He failed to appear. Notice of the hearing was served on Attorney Loethen at his address of record in this case.

On December 16, 2020, the Court conducted a status conference in this matter. The Court called the case and noted that defense counsel Christopher Loethen was not present. Government counsel, Attorney Kathy Servatius, advised that she had tried to contact Attorney Loethen on many occasions with no response. The Defendant, who had retained Attorney Loethen, also advised the Court that neither he nor his family could get in touch with his attorney. The Court then set a hearing in this action for December 18, 2020. At the December 18, 2020 hearing, Attorney Kathy Servatius was present by video for the Government and Defendant Julio Chavez-

1 Lucatero was present by video. However, Defendant's counsel, Christopher Loethen, did not
2 appear for the hearing. The Government informed the Court that attempts had been made to reach
3 Mr. Loethen without success. The Court issued an Order to Show Cause for a hearing on
4 December 28, 2020, at 2:00 p.m. in Courtroom 8 and ordered Attorney Loethen to personally
5 appear and show cause why sanctions should not be imposed.¹ At the December 28, 2020
6 hearing, Attorney Loethen again failed to appear, and again, counsel for the government and
7 Defendant informed the Court that attempts to contact Attorney Loethen, via all known contact
8 information, were made, but they were unable to get a response from Attorney Loethen.

9 The right to counsel under the Sixth Amendment "encompasses two distinct rights: a right
10 to adequate representation and a right to choose one's own counsel." *U.S. v. Brown*, 785 F.3d
11 1337, 1343 (9th Cir. 2015) (quoting *Rivera-Corona*, 618 F.3d 976, 979 (9th Cir. 2010)).
12 Defendant Chavez-Lucatero retained Attorney Loethen in this criminal action. However,
13 Attorney Loethen has utterly failed to comply with his professional duties as counsel to protect
14 his client's interests and to appear at noticed hearings. In addition, Attorney Loethen has failed to
15 comply with subsequent orders of this Court.

16 The Court possesses inherent authority to impose sanctions to manage its own affairs to
17 achieve the orderly and expeditious disposition of cases. *Chambers v. NASCO, Inc.*, 501 U.S. 32,
18 43 (1991). The Court's inherent power is that which is necessary to the exercise of all others,
19 including to protect the due and orderly administration of justice and maintain the authority and
20 dignity of the court. *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980). Local Rule 110
21 provides that a "failure ... of a party to comply ... with any order of the Court may be grounds for
22 the imposition by the Court of any and all sanctions ... within the inherent power of the Court."
23 District courts have the inherent power to dismiss an action or "enter a default judgment to ensure
24 the orderly administration of justice and the integrity of their orders." *Phoceene Sous-Marine*,
25 *S.A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 806 (9th Cir.1982).

26 Attorney Loethen was warned that sanctions would be imposed for failure to comply with
27

28 ¹ On December 23, 2020, Defendant was appointed new counsel.

1 Court orders. Attorney Loethen, nonetheless, has failed to comply. Therefore, he is ordered to
2 pay to this Court, the sum of \$250.00 in monetary sanctions.

3 To the extent the Court's docket does not reflect correct address information, the fault lies
4 with Attorney Loethen. Local Rule 182(f) provides, "Each appearing attorney and pro se party is
5 under a continuing duty to notify the Clerk and all other parties of any change of address or
6 telephone number of the attorney or the pro se party. Absent such notice, service of documents at
7 the prior address of the attorney or pro se party shall be fully effective."

8 Attorney Loethen also has an ethical responsibility to his client. Attorney Loethen is
9 ordered to comply with California Rule of Professional Responsibility, Rule 1.16(e)(2), which
10 states "the lawyer promptly shall refund any part of a fee or expense paid in advance that the
11 lawyer has not earned or incurred." Given the limited work undertaken by Attorney Loethen in
12 this matter, and based on the government's inability to reach him, the Court expects a large part,
13 if not all, of the money advanced to Attorney Loethen will be returned to Defendant or his family.

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15 **ORDER**

16 For the reasons stated above, the Court ORDERS as follows:

- 17 1. Attorney Christopher Loethen is ORDERED to pay to the United States District Court the
18 sum of \$250.00, no later than January 20, 2021, with payment to be sent to Clerk's Office,
19 United States District Court, 2500 Tulare St., Suite 1500, Fresno, CA 93721;
- 20 2. Attorney Christopher Loethen is ORDERED is comply with Rule California Rule of
21 Professional Responsibility, Rule 1.16(e)(2);
- 22 3. The Clerk of Court is directed to serve this order on Attorney Loethen at:
 - 23 a. Law Office of Christopher Loethen, 2039 Canal St, Merced, CA 95340-3726, and
 - 24 b. Law Office of Christopher Loethen, 548 W. 21st Street, Merced, CA 95340;
- 25 4. Counsel shall also file an affidavit accompanying the payment of this sanction which
26 states that it is paid personally, out of personal funds, and is not and will not be billed,
27 directly or indirectly, to the clients or in any way made the responsibility of his client; and
28 shall also inform the Court of the status of any refund to Defendant or his family.

1 Failure to comply with this order will result in a complaint of attorney misconduct with the
2 California State Bar.

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4 IT IS SO ORDERED.

5 Dated: December 29, 2020

/s/ Barbara A. McAuliffe
6 UNITED STATES MAGISTRATE JUDGE
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